

Broker Management Clinic Core Outline

Available Resources

- A.R.S. §32-2123(E)
- Real Estate Law Book & Other Publications
- Web Site
- Late Breaking News

Reasonable Supervision

- A.R.S. §32-2153(A)(21); A.A.C. R4-28-1103

Office Policy Manual

- A.A.C. R4-28-1103

Responsibility

- A.A.C. R4-28-1103 - employing broker is responsible for acts of employees in the course of work

Unlicensed Activity

- Late renewal - A.R.S. §32-2130, Documentation required - A.A.C. R4-28-306
- Paying compensation to or employing an unlicensed person
- Violations: A.R.S. §§32-2153(A)(10), (A)(14), (B)(6) and 32-2155(A)&(B)
- Residential leasing agents and managers - A.R.S. §32-2121(A)(6).

Records Retention Schedules (See Exhibit B)

- Five years for sales and lease transaction records - ARS § 32-2151.01, AAC R4-28-802
- One year for transactions which did not close (uncompleted sales or lease transactions)
A.R.S. 32 §2151.01
- Three years for property management records. ARS § 32-2175

Real Estate Employment Agreements A.R.S. §32-2151.02

- **Requirements of a valid agreement (both listing and buyer brokerage)**
 - Written in clear and unambiguous language
 - Fully state material terms, including compensation
 - Have a definite duration or expiration date, showing dates of inception and expiration
 - Be signed by all parties
- **Assignment of employment agreements. A.R.S. §§ 32-2151.02(B) and 32-2173(A)(1)(j)**
 - Sale of employment agreements
 - Sale of brokerage
- **Soliciting an additional exclusive employment agreement**
 - Requires written disclosure and acknowledgment
 - Examples of violations

Property Management Agreements A.R.S. §32-2174

- “Shall” include
- “May” include
- Requirements upon termination
- Assignment - see A.R.S. §32-2173(A)(1)(j)

Trust Funds

- Definition and purpose
- **General (Sales) - A.R.S. §32-2151(A) and (B)(2)**
 - A trust account is not mandatory
 - Maximum commingling \$500
 - Must be federally insured or guaranteed
 - Deposit slips, receipts and documentation required
 - Deposits to be made “immediately” or as stated in writing
 - Records kept according to generally acceptable accounting principals
 - Descriptive receipts, disbursements journal and client ledger
 - Computer back-up of all computerized records
 - Monthly trust fund account bank reconciliation required; includes client ledger balances
 - Trust accounts can be interest bearing (with disclosure)
- **Property management - A.R.S. §32-2174(A) and A.R.S. §32-2151(A), (B) and (C)**
 - Account must have descriptive title, i.e., “trust, fiduciary or similar wording”
 - Mandated for all owner’s money held by broker
 - Access to account
 - Owner may not sign on broker’s trust account
 - Broker may not sign on an owner’s account

- Deposits to be made “within three banking days”
- Unlicensed signer allowed, if under broker’s direct employ
- Dual signatures, facsimile signatures and alternate methods of remitting owner funds allowed, but do not reduce broker liability
- **Out-of-state trust fund - additional requirements**
 - Property management trust account A.R.S. §32-2174
 - Sales trust account A.R.S. §32-2151(C)

Transaction Folders

- **Sales - A.R.S. §2151.01(F)**
 - Evidence earnest and down moneys properly handled
 - Complete copy of sales contract, escrow account receipt, closing or settlement statement, escrow instructions, employment agreement, release of escrow moneys
- **Nonresidential property management - A.R.S. §32-2175(F)**
 - Evidence earnest and down moneys properly handled
 - Complete copy of lease, employment agreements

Transaction Files Folder Maintenance

- **Sales**
 - Keep chronological log or in other systematic manner. A.R.S. §32-2151.01(E)
- **Nonresidential leasing**
 - Keep chronological log or in other systematic manner. A.R.S. §§ 32-2151.01(E) and 32-2175(F)
- **Residential rental agreements**
 - Keep chronological log or in other systematic manner. A.R.S. §32-2151.01(E)
- **Property management agreements**
 - Consecutively numbered or a system that is orderly, easily accessible and consistent with generally accepted professional standards. A.R.S. § 32-2175 (E)

The Broker Audit

- Broker Audit Declaration A.A.C. R4-28-303 (A, 2 f)
- How and when scheduled
- **Types of audits**
 - Normal and Routine
 - Educational Audits
 - Investigative Audits
 - a) Upon request from Investigation Division
 - b) Potential injured party

- c) ACJIS certification
- Letters in lieu of audits

Place of Business. A.R.S. §32-2126

- Physical location
- Change or abandonment without notice to Department
- **Sign at entrance**
 - Clearly visible
 - Employing broker name and dba
 - Trade/franchise name use on sign - A.A.C. R4-28-502 (J)

Advertising and Promotions

- Print, radio & television, and on the World Wide Web
- **Blind Advertisements and Licensee acting as principal - A.A.C. R4-28-502 (A) and (B)**
 - Failure to place owner/agent in ads
 - Failure to place company name in advertisements
- **Advertisements must be accurate and factual - A.A.C. R4-28-502 (C)**
 - Entity or dba (doing business as) name must be in all advertisements wherein the licensee is acting as an agent - A.A.C. R4-28-502 (E)
 - Failure to place company name in advertisements
 - General use of franchisee or franchisor name - A.A.C. R4-28-502(I) and (J)
 - Use of "award" or "prize" in promotion prohibited - A.A.C. R4-28-503 (A)
 - Full disclosure of terms in advertisements - A.A.C. R4-28-503 (B)
 - a) Terms, conditions, restrictions and expiration dates required.
 - b) Examples of ads include cash rebates, moving van paid for at close of escrow, trips at close of escrow, etc.
 - Lotteries, drawings, contests prohibited in individual transactions - A.R.S. §32-2153 (A)(13) and A.A.C. R4-28-503 (C)
 - Web Site Advertising - A.A.C. R4-28-502 (L)
 - The designated broker shall supervise all advertising - A.A.C. R4-28-502 (F)
- **Timeshares and Promotions. A.R.S. §32-2197.11(J)(K)**
 - Premiums.
 - a) A premium may be given to persons who visit time-share sites or who attend a time-share presentation.
 - b) No person shall be required to attend any presentation or tour for longer than one hundred twenty minutes to receive the premium.
 - c) The developer shall make complete and clear written disclosure to each time-share prospect before any presentation or tour that minimally includes detailed information about any premium offered as an incentive, including:
 - its estimated retail value
 - any conditions that must be met
 - any limitations that apply to receive the premium, and

- about the one hundred twenty minute maximum limit placed on a site tour or sales presentation.
- d) A developer or a representative of a developer conducting time-share presentations or tours may offer a time-share prospect a redemption certificate in return for participation in a presentation or tour if all of the statutory requirements are met.

Disclosures. A.A.C. R4-28-1101

- A. Duties to Clients
- B. Obligation to others
- H. Standards of Practice & Competency
- I. Relevant Information
- J. Occupancy before and after close of escrow
- K. Professional Advice

- **Disclosure of all information that materially and adversely affects the consideration to be paid must be in writing.**
- **Examples of items that need to be disclosed are:**
 - Inability of seller/lessor to perform
 - Inability of buyer/lessee to perform
 - Material defects in property
 - Liens or encumbrances
 - Property in vicinity of a public or military airport
 - Repairs performed by unlicensed contractors
 - Prior fire in property
 - Termites
 - Superfund site
 - Contamination due to drugs
- **Licensees acting as principal - A.A.C. R4-28-1101 (E)**
- **Disclosure of compensation - A.A.C. R4-28-1101 (E), (G)**
- **Disclosure of Dual Agency**
- **Real estate sales and leases; disclosure - A.R.S. §32-2156**
 - When action may not be brought:
 - No criminal, civil or administrative action may be brought against a transferor or lessor of real property or a licensee for failing to disclose that the property being transferred or leased is or has been:
 - a) The site of a natural death, suicide or homicide or any other crime classified as felony;
 - b) Owned or occupied by a person exposed to the human immunodeficiency virus or diagnosed as having the acquired immune deficiency syndrome or any other disease that is not known to be transmitted through common occupancy of real estate;
 - c) Located in the vicinity of a sex offender
 - Effect on Transaction

- Failing to disclose any fact or suspicion as set forth in subsection A shall not be grounds for termination or rescission of any transaction in which real property has been or will be transferred or leased.

Audits Referred for Administrative Action and Possible Disciplinary Actions

- Deny, suspend, revoke license.
- Assess a civil penalty up to \$1,000 per violation.
- Issue a provisional license.
- Require additional continuing education hours.
- Require posting of a surety bond.